

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

<p>ABIRA MEDICAL LABORATORIES, LLC d/b/a GENESIS DIAGNOSTICS,</p> <p>Plaintiff,</p> <p>v.</p> <p>AVERA HEALTH PLANS, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No. 23-03465 (GC) (TJB)</p> <p><u>OPINION</u></p>
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CASTNER, U.S.D.J.

THIS MATTER comes before the Court upon Defendant Avera Health Plans’ Motion to Dismiss the Amended Complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(2) or for failure to state a claim pursuant to Rule 12(b)(6). (ECF No. 13.) Plaintiff opposed, and Defendant replied. (ECF Nos. 17 & 18.) The Court has carefully considered the submissions and decides the matter without oral argument pursuant to Rule 78(b) and Local Civil Rule 78.1(b). For the reasons set forth below, and other good cause shown, Defendant’s motion is **GRANTED** in part and **DENIED** in part. The case is **DISMISSED** due to lack of personal jurisdiction.

I. BACKGROUND

This is one of more than forty cases that Plaintiff Abira Medical Laboratories, LLC, has filed in the United States District Court for the District of New Jersey or had removed here from the Superior Court of New Jersey since June 2023. In each of these cases, Plaintiff sues “health insurance companies, third-party administrators, health and welfare funds, or . . . self-insured

employers” based on their alleged failure to pay Plaintiff “for laboratory testing of specimen, including but not limited to COVID-19 tests, which [Plaintiff] performed for the insureds/claimants.” (ECF No. 10 ¶ 1.)

Plaintiff “is a domestic limited liability company organized under the laws of the State of New Jersey.” (*Id.* ¶ 11.) Several of Plaintiff’s “administrators and decision-makers live in New Jersey, work in New Jersey, and run [Plaintiff’s] affairs from New Jersey.” (*Id.* ¶ 12.) Plaintiff “operated a licensed medical testing laboratory business, which provided services nationwide,” and Plaintiff “performed clinical laboratory, toxicology, pharmacy, genetics, and addiction rehabilitation testing services on specimen,” including “COVID-19 testing.” (*Id.* ¶¶ 29-31.)

Defendant Avera Health Plans has its principal place of business in Sioux Falls, South Dakota. (*Id.* ¶ 13.) Plaintiff alleges that Defendant “provides health insurance services throughout New Jersey.” (*Id.*)

Plaintiff alleges that it submitted “claims” for laboratory testing to Defendant that “were supposed to” be paid “pursuant to Abira’s fee schedule or the insurer’s fee schedule.” (*Id.* ¶¶ 40-43.) The amount due for these “services rendered by [Plaintiff] to . . . insureds/claimants” is alleged to total \$171,189.96. (*Id.* ¶¶ 9, 65-66.) Plaintiff does not identify the individual insureds/claimants or how many insureds/claimants are involved in this case, the type of health insurance plans under which the insureds/claimants were covered, or any specific provisions in any plan that entitles the insureds/claimants to benefits from Defendant.

Plaintiff asserts eight causes of action against Defendant, its “affiliates,” and unnamed entities/persons: Count One for breach of contract; Count Two for breach of implied covenant of good faith and fair dealing; Count Three for fraudulent misrepresentation; Count Four for negligent misrepresentation; Count Five for promissory estoppel; Count Six for equitable estoppel; Count Seven for quantum meruit/unjust enrichment; and Count Eight for violations of the Families First

Coronavirus Response Act (“FFCRA”) and the Coronavirus Aid, Relief, Economic Security (“CARES”) Act. (*Id.* ¶¶ 57-117.)

This case was removed to this Court from the Superior Court of New Jersey, Mercer County, Law Division, based on diversity jurisdiction pursuant to 28 U.S.C. § 1332. (*See* ECF No. 1.) On August 14, 2023, Defendant moved to dismiss the original Complaint. (ECF No. 6.) The Court terminated the motion without prejudice when Plaintiff indicated that it intended to file an amended complaint. (ECF No. 9.) On September 22, Plaintiff filed the Amended Complaint, which is the operative pleading. (ECF No. 10.) On October 26, Defendant moved to dismiss the Amended Complaint pursuant to Rules 12(b)(2) and 12(b)(6). (ECF No. 13.) Plaintiff opposed on December 4, and Defendant replied on December 11. (ECF Nos. 17 & 18.)

II. LEGAL STANDARD¹

Rule 12(b)(2) permits a defendant to move to dismiss a complaint for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). When a statute does not authorize nationwide service of process, federal courts in New Jersey exercise personal jurisdiction to the extent permitted by New Jersey law. *See Eurofins Pharma US Holdings v. BioAlliance Pharma SA*, 623 F.3d 147, 155 (3d Cir. 2010) (“[A] federal district court may assert personal jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of that state.”).

“New Jersey’s long-arm statute provides for jurisdiction coextensive with the due process requirements of the United States Constitution.” *Miller Yacht Sales, Inc. v. Smith*, 384 F.3d 93, 96 (3d Cir. 2004) (first citing N.J. Court Rule 4:4-4(c); and then citing *Charles Gendler & Co. v. Telecom Equip. Corp.*, 508 A.2d 1127, 1131 (N.J. 1986)). Therefore, the key inquiry on a motion

¹ Because the Court determines that it lacks personal jurisdiction and does not reach the motion to dismiss for failure to state a claim, the Rule 12(b)(6) standard is not recited. *See Lightfoot v. Cendant Mortg. Corp.*, 580 U.S. 82, 95 (2017) (“A court must have . . . power over the parties before it (personal jurisdiction) before it can resolve a case.”).

to dismiss for lack of personal jurisdiction is whether, under the Due Process Clause, “the defendant has certain minimum contacts with . . . [New Jersey] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *O’Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 316 (3d Cir. 2007) (quoting *Int’l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945)).

A district court can assert either general jurisdiction (*i.e.*, “all-purpose” jurisdiction) or specific jurisdiction (*i.e.*, “case-linked” jurisdiction) over a defendant that has minimum contacts with the forum. *See Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 262 (2017). For foreign corporations, a “court may assert general jurisdiction . . . to hear any and all claims against them when their affiliations with the [forum] State are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Fischer v. Fed. Express Corp.*, 42 F.4th 366, 384 (3d Cir. 2022) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). To assert specific jurisdiction over a foreign corporation there are two primary elements that must be met: “First, there must be purposeful availment: minimum contacts with the forum state that show the defendant took a deliberate act reaching out to do business in that state. Second, the contacts must give rise to—or relate to—plaintiff’s claims.” *Hepp v. Facebook*, 14 F.4th 204, 207 (3d Cir. 2021) (citing *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024-25 (2021)). If these elements are met, the exercise of jurisdiction must “otherwise comport[] with fair play and substantial justice.” *D’Jamoos ex rel. Est. of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 102 (3d Cir. 2009) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985)).

III. DISCUSSION

A. PERSONAL JURISDICTION

i. ERISA

Plaintiff's Amended Complaint repeatedly references the Employee Retirement Income Security Act of 1974 ("ERISA"), but the first seven causes of action are asserted as common-law claims and the eighth cause of action is for alleged violations of the FFCRA and the CARES Act. (ECF No. 10 ¶¶ 59-117.) Plaintiff does not even allege in the Amended Complaint that the health insurance plans at issue are in fact governed by ERISA. (*Id.* ¶ 3 ("To the extent that the contracts relevant to the underlying claims are governed by EIRSA").) Nevertheless, Plaintiff contends that personal jurisdiction is appropriate here because "ERISA is unique in having relaxed jurisdictional requirements." (*Id.* ¶ 28.) Other courts in this District have rejected similar attempts by Plaintiff to invoke ERISA's jurisdictional provisions without asserting a separate count under ERISA for benefits or expressly pleading that the plans at issue are in fact ERISA plans.² *See, e.g., Abira Med. Lab'ys, LLC v. Anthem Blue Cross Blue Shield Missouri*, Civ. No. 23-4940, 2024 WL 1704981, at *4 (E.D. Pa. Apr. 19, 2024) ("[Abira] contends that . . . [ERISA] created 'relaxed jurisdictional requirements' for plaintiffs. Even if true, this would be irrelevant; the claims enumerated in [Abira's] Complaint sound in state contract and quasi-contract law, not the ERISA

² There appears to be a disagreement among district courts in this Circuit as to whether ERISA relaxes personal jurisdiction requirements or just venue requirements. *Compare Abira Med. Lab'ys, LLC*, 2024 WL 1651678, at *3 ("[I]f a defendant has sufficient contacts with the United States, then any district court will have personal jurisdiction over it in an ERISA action."); *Su v. Marlton Pike Precision, LLC 401(K) & Profit-Sharing Plan*, Civ. No. 23-02972, 2024 WL 489542, at *3 (D.N.J. Feb. 8, 2024) (same), *with Abira Med. Lab'ys, LLC*, 2024 WL 1704981, at *4 ("Genesis is likely wrong that ERISA confers nationwide jurisdiction. It appears far more likely that the statutory language cited by Genesis '[was] meant to expand venue, not personal jurisdiction.'" (citation omitted)); *Williams v. Reliance Standard Life Ins. Co.*, Civ. No. 20-5036, 2021 WL 3852105, at *3 (E.D. Pa. Aug. 27, 2021) ("Even if Congress had provided for nationwide service of process, the statutes 'were meant to expand venue, not personal jurisdiction.'" (citation omitted)). The Court does not now reach this issue.

statute.”); *Abira Med. Lab’ys, LLC v. AvMed Inc.*, Civ. No. 23-5185, 2024 WL 1651678, at *3 (E.D. Pa. Mar. 20, 2024) (“[Abira] may not evade traditional jurisdictional requirements by making a passing reference to ERISA.”); *see also Evers v. Indep. Media, Inc.*, Civ. No. 10-03081, 2010 WL 11601039, at *8 (C.D. Cal. Oct. 22, 2010) (“[T]he fact that Plaintiff’s Complaint makes passing reference to an ERISA-governed plan does not mean that ERISA must govern any of her claims.” (emphasis removed)).

Here, Defendant argues that even if the Court construes the Amended Complaint to assert an ERISA claim for benefits, such a claim should be dismissed for failure to exhaust administrative remedies. (ECF No. 13-2 at 10-11.³) Defendant notes that it was provided a list of unpaid or underpaid claims by Plaintiff and that Plaintiff “has identified one, and only one, claim arising under an ERISA plan as being in dispute.” (*Id.* at 11.) And Defendant writes that because “[n]either [Plaintiff] nor the plan member ever pursued an administrative appeal . . . , no suit may properly be brought on it.” (*Id.*) In opposition, Plaintiff is silent as to whether Defendant’s representation is accurate and whether an administrative appeal was ever pursued. (ECF No. 17.)

The Court notes that a pleading cannot be amended by documents submitted as part of briefing on a motion to dismiss, *see, e.g., Mills v. Ethicon, Inc.*, 406 F. Supp. 3d 363, 387 (D.N.J. 2019), but even if the Court were to construe the Amended Complaint as asserting an ERISA claim, the basis for dismissing such claim is more straightforward than failure to exhaust, which is typically decided at the summary judgment stage. *See, e.g., Stampone v. Walker*, 722 F. App’x 246, 249 (3d Cir. 2018) (“Neither the District Court nor the Pension Defendants, however, have cited any authority requiring a plaintiff to plead exhaustion in his or her complaint. To the contrary, all of the decisions on which they rely addressed exhaustion at the summary judgment.”);

³ Page numbers for record cites (*i.e.*, “ECF Nos.”) refer to the page numbers stamped by the Court’s e-filing system and not the internal pagination of the parties.

NJSR Surgical Ctr., L.L.C. v. Horizon Blue Cross Blue Shield of New Jersey, Inc., 979 F. Supp. 2d 513, 524 (D.N.J. 2013) (“The requirement that a plaintiff have exhausted administrative remedies does not seem to embody any particular standard of pleading. Rather, it is ordinarily addressed with the aid of evidence adduced in discovery, typically on a motion for summary judgment.”).

In this case, Plaintiff has not plausibly established that it has standing to pursue an ERISA claim for benefits, which is ordinarily reserved for “participants” and “beneficiaries.” *BrainBuilders, LLC v. Aetna Life Ins. Co.*, Civ. No. 17-03626, 2024 WL 358152, at *5 (D.N.J. Jan. 31, 2024) (“Typically, ‘standing to sue under ERISA is limited to participants and beneficiaries.’” (quoting *Prestige Inst. for Plastic Surgery, P.C. o/b/o S.A. v. Horizon Blue Cross Blue Shield of New Jersey*, Civ. No. 20-3733, 2021 WL 4206323, at *3 (D.N.J. Sept. 16, 2021))). Plaintiff alleges that it is an “authorized representative” pursuant to 29 C.F.R. § 2560.503-1(b)(4), but courts have held that the regulation “is limited to internal appeals,” not civil actions for benefits. *See, e.g., Prestige Inst. for Plastic Surgery, P.C. o/b/o S.A. v. Horizon Blue Cross Blue Shield of New Jersey*, Civ. No. 20-3733, 2021 WL 4206323, at *3 (D.N.J. Sept. 16, 2021); *Cooperman v. Horizon Blue Cross Blue Shield of New Jersey*, Civ. No. 19-19225, 2020 WL 5422801, at *3 (D.N.J. Sept. 10, 2020) (“This Court has repeatedly held that this regulation applies only to internal claims and appeals, not to federal lawsuits brought after the plan member exhausts those appeals.”).⁴ Plaintiff also alleges an assignment but does not identify the particular persons who

⁴ This view is shared by courts outside this District. *See, e.g., OSF Healthcare Sys. v. SEIU Healthcare IL Pers. Assistants Health Plan*, 671 F. Supp. 3d 888, 891-92 (N.D. Ill. 2023) (“[I]n the regulations governing ERISA, 29 C.F.R. § 2560.503-1(b)(4) expressly allows authorized representatives like OSF to file *internal* claims and appeals but, importantly, does not confer standing to authorized representatives to pursue civil actions against a plan.”); *Park Ave. Aesthetic Surgery, P.C. v. Empire Blue Cross Blue Shield*, Civ. No. 19-9761, 2021 WL 665045, at *7 (S.D.N.Y. Feb. 19, 2021) (“[A] medical provider’s status as an Authorized Representative does not . . . independently provide a cause of action pursuant to ERISA.”).

allegedly provided an assignment nor the scope of any such assignment. *See, e.g., Minisohn Chiropractic & Acupuncture Ctr., LLC v. Horizon Blue Cross Blue Shield of New Jersey*, Civ. No. 23-0134, 2023 WL 8253088, at *3 (D.N.J. Nov. 29, 2023) (“[D]istrict courts in the Third Circuit have ruled that a healthcare provider ordinarily must identify a specific patient(s) who has assigned their claim(s) for benefits as well as factual matter that indicates that the provider is proceeding pursuant to an appropriate assignment, such as a copy of the assignment(s) at issue, the relevant language from the assignment(s), or some other evidence of the scope of the assignment(s).”).

Accordingly, there is no basis for the Court to infer that ERISA’s jurisdictional provisions are properly invoked in this case. The Court will therefore examine whether there is general or specific jurisdiction over Defendant as to Plaintiff’s common-law claims and the claim for alleged violations of the FFCRA and the CARES Act.

ii. GENERAL JURISDICTION

“For a corporate defendant, the main bases for general jurisdiction are (1) the place of incorporation [or formation]; and (2) the principal place of business.” *Display Works, LLC v. Bartley*, 182 F. Supp. 3d 166, 173 (D.N.J. 2016) (citing *Daimler AG v. Bauman*, 571 U.S. 117, 136 (2014)); *see also Fischer*, 42 F.4th at 383 (“For a corporation, general jurisdiction is only proper in states where the corporation is fairly regarded as ‘at home,’ which generally is restricted to the corporation’s state of incorporation or the state of its principal place of business.”). “[G]eneral jurisdiction may [also] arise in the ‘exceptional case’ where ‘a corporation’s operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State.’” *Display Works*, 182 F. Supp. 3d at 173 (citation omitted); *see also Daimler AG*, 571 U.S. at 139 n.19. Such an exceptional case requires a plaintiff to furnish at least some evidence that reasonably suggests that a corporate entity’s contacts with the forum state are so substantial that they surpass the entity’s

contacts with other states. *See, e.g., Ontel Prod. Corp. v. Mindscope Prod.*, 220 F. Supp. 3d 555, 560 (D.N.J. 2016) (“[Plaintiff] does not provide any evidence that reasonably suggests that indirect sales in New Jersey occur at all or that those sales surpass [the defendant’s] third party sales made elsewhere.”).

Here, Plaintiff pleads that Defendant has its principal place of business in Sioux Falls, South Dakota, and there is no allegation that Defendant was incorporated or has substantial operations in New Jersey. (ECF No. 10 ¶¶ 13-14.) There is thus nothing in the record to suggest that Defendant was either incorporated or headquartered in New Jersey or that its business operations in New Jersey are so substantial that they give rise to the exceptional case of general jurisdiction.⁵ Indeed, Defendant submits a declaration from Richard Korman, Vice President of Avera Health Plans, who attests that Defendant is incorporated in South Dakota, has its principal place of business in South Dakota, and has never been registered to do business or maintained a place of business in New Jersey. (ECF No. 13-4 ¶¶ 3-8.) The Court therefore finds that it does not have general jurisdiction over Defendant.

iii. SPECIFIC JURISDICTION

Specific jurisdiction allows the court to adjudicate claims levied against defendants with “certain minimum contacts . . . such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co.*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The minimum contacts analysis focuses on whether the

⁵ The only basis for general jurisdiction that Plaintiff proffers in the Amended Complaint is that Defendant “provides health insurance services throughout New Jersey.” (ECF No. 10 ¶¶ 13-14.) But this conclusory allegation is insufficient to find that Defendant’s contacts with New Jersey rise to the “exceptional” level to render it at home here. *See Abira Med. Lab’ys, LLC v. Cigna Health & Life Ins. Co.*, Civ. No. 22-6408, 2023 WL 4074081, at *3 (D.N.J. June 16, 2023) (“At most, [Abira] alleges that Cigna is registered in New Jersey and conducts business throughout the state, including Bergen County. Even when treated as true, these allegations are insufficient grounds for personal jurisdiction.” (collecting cases)).

defendant has, by some act related to the plaintiff's current cause of action, "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King Corp.*, 471 U.S. at 475 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). And specific jurisdiction is typically present only if the plaintiff's cause of action arises out of a defendant's forum-related activities, such that the defendant "should reasonably anticipate being haled into court there." *D'Jamoos*, 566 F.3d at 105 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)); *see also Ford Motor Co.*, 141 S. Ct. at 1019 ("[T]he plaintiff's claims 'must arise out of or relate to the defendant's contacts' with the forum." (quoting *Bristol-Myers Squibb*, 582 U.S. at 262)).

Although a court usually determines specific jurisdiction on a claim-by-claim basis, a claim specific analysis may not be necessary "for certain factually overlapping claims." *O'Connor*, 496 F.3d at 317 n.3; *see also TorcUP, Inc. v. Aztec Bolting Servs., Inc.*, 386 F. Supp. 3d 520, 525 n.2 (E.D. Pa. 2019) ("[F]or 'certain factually overlapping claims' courts need not evaluate specific jurisdiction on a claim-by-claim basis." (citation omitted)); *HV Assocs., LLC v. PNC Bank, N.A.*, Civ. No. 17-8128, 2019 WL 13410696, at *10 (D.N.J. Apr. 18, 2019) ("Although [s]pecific jurisdiction is generally assessed on a claim-by-claim basis, 'it may not be necessary to do so for certain factually overlapping claims.'" (citation omitted)). Because Plaintiff's claims in this case all stem from the same allegation that Defendant failed to pay Abira for laboratory testing services, a claim-specific analysis is not necessary. *See Abira Med. Lab'ys, LLC v. Johns Hopkins Healthcare LLC*, Civ. No. 19-05090, 2020 WL 3791565, at *4 (E.D. Pa. July 7, 2020) ("Because [Abira's] claims all stem from the same conduct of JHHC failing to reimburse [Abira] for . . . laboratory testing services, a claim-specific analysis is not necessary.").

The Amended Complaint and Plaintiff's opposition brief assert two bases for specific jurisdiction over Defendant in New Jersey: (1) Defendant's "representatives communicated with

Abira’s representatives regarding tens of claims submitted by Abira,” and (2) Defendant “processed and paid numerous claims submitted by” Plaintiff. (ECF No. 10 ¶ 27; ECF No. 17 at 10-11.) Neither of these bases is sufficient.

District courts in the Third Circuit have repeatedly rejected nearly identical allegations as creating specific jurisdiction. These courts have found that a physician’s unilateral choice to send a patient’s specimen to a laboratory for testing does not create personal jurisdiction over the patient’s insurer in the laboratory’s home state when the insurer simply pays the resulting claims or communicates with the laboratory about the claims.⁶ See, e.g., *Abira Med. Lab’ys, LLC v. IntegraNet Physician Res., Inc.*, Civ. No. 23-03849, 2024 WL 1905754, at *4 (D.N.J. Apr. 30, 2024) (finding no specific jurisdiction in New Jersey over Texas corporations that allegedly paid twenty claims to Abira in New Jersey); *Abira Med. Lab’ys, LLC*, 2024 WL 1704981, at *3 (finding specific jurisdiction lacking over Missouri health insurers because sending laboratory samples for testing in Pennsylvania and communicating with regard to reimbursement requests fell “well short [of] the kind of ‘deliberate targeting of the forum’ that is necessary to establish specific personal jurisdiction” (citation omitted)); *Abira Med. Lab’ys, LLC*, 2024 WL 1651678, at *2 (“Sending payments to Pennsylvania alone—where the contract was not negotiated or executed there—does not constitute ‘purposeful availment.’”); *Abira Med. Lab’ys LLC v. Molina Healthcare of Fla., Inc.*, Civ. No. 24-506, 2024 WL 1182855, at *3 (E.D. Pa. Mar. 19, 2024) (finding specific jurisdiction lacking over a Florida corporation because “[p]atients’ physicians’ decision to utilize Plaintiff’s services in Pennsylvania [was] that type of ‘unilateral activity’ of a third party that

⁶ The sole case cited by Plaintiff in opposition is *Conte v. Promethean Inc.*, Civ. No. 21-20490, 2022 WL 4596727 (D.N.J. Sept. 30, 2022). That case is readily distinguishable, however. There, the defendants did not challenge jurisdiction over the plaintiff’s former employer, which was “a company conducting business in New Jersey whose business activity in the state [was] directly related to [the plaintiff’s] claims.” *Id.* at *9. Here, in contrast, Plaintiff has not established any business activity in New Jersey by Defendant giving rise to the claims.

should not subject a defendant to jurisdiction in a forum that it itself had not created contact with”); *Abira Med. Lab’ys, LLC*, 2023 WL 4074081, at *3 (finding specific jurisdiction lacking in New Jersey where it was merely alleged that the defendant was “registered in New Jersey and conduct[ed] business throughout the state” (collecting cases)); *Abira Med. Lab’ys, LLC v. Humana Inc.*, Civ. No. 22-06190, 2023 WL 3052308, at *3 (D.N.J. Apr. 24, 2023) (finding specific jurisdiction lacking in New Jersey where it was alleged that the defendant “and certain unnamed subsidiaries or affiliates failed to reimburse [Abira] for medical services provided to individuals covered by health insurance plans offered by [the defendant] and these other entities”); *Abira Med. Lab’ys, LLC*, 2020 WL 3791565, at *5 (finding no specific jurisdiction over a Maryland limited liability company in Pennsylvania despite the allegation that the defendant had previously paid for some of the laboratory testing services performed in Pennsylvania); *see also Vetrotex Certainteed Corp. v. Consol. Fiber Glass Prod. Co.*, 75 F.3d 147, 152 (3d Cir. 1996) (“[I]nformational communications in furtherance of [a contract between a resident and a nonresident] does not establish the purposeful activity necessary for a valid assertion of personal jurisdiction over [the nonresident defendant].” (citation omitted)); *M3 USA Corp. v. Hart*, 516 F. Supp. 3d 476, 492 (E.D. Pa. 2021) (“‘[I]nfrequent or minimal communication’ is [not] sufficient to establish purposeful, minimal contacts.” (citation omitted)).

Here, too, Plaintiff has not established that Defendant has the requisite minimum contacts with New Jersey to find that it purposefully availed itself of the New Jersey forum or that the claims at issue—Defendant’s alleged failure to reimburse Plaintiff for testing services provided to Defendant’s members—arise from or relate to Defendant’s contacts with New Jersey. Accordingly, this Court does not have specific jurisdiction over Defendant.⁷

⁷ The Court is unconvinced that jurisdictional discovery would uncover evidence that would alter the conclusion, and the Court sees no reason to grant discovery when Plaintiff has not offered

B. TRANSFER OF VENUE

Where jurisdiction is lacking, a district “court shall, if it is in the interest of justice, transfer such action . . . to any other such court . . . in which the action . . . could have been brought at the time it was filed or noticed, and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed in . . . the court from which it is transferred.”⁸ 28 U.S.C. § 1631. The Third Circuit Court of Appeals has explained that “a district court that lacks personal jurisdiction must at least consider a transfer.” *Danziger & De Llano, LLP v. Morgan Verkamp LLC*, 948 F.3d 124, 132 (3d Cir. 2020). But “[t]he district court does . . . have ‘broad discretion’ not to transfer.” *Id.* (quoting *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 883 (3d Cir. 1995)). “And though [the district court] may transfer a case at the parties’ request or *sua sponte*, it need not investigate on its own all other courts that ‘might’ or ‘could have’ heard the case.” *Id.* (citations omitted).

Here, the Court does not find that it is in the interest of justice to transfer. The parties have not engaged in discovery or significant briefing. Plaintiff has not raised any concern that its claims might become time-barred if the case were dismissed for lack of personal jurisdiction rather than transferred. Defendant has also not sought transfer. Because the Court is unaware of what interests and intentions may have led the parties not to seek transfer, the case shall be dismissed without

a sense of what relevant jurisdictional facts discovery might uncover. *See Murphy v. Eisai, Inc.*, 503 F. Supp. 3d 207, 225 (D.N.J. 2020) (“The facts and allegations do not rise to the level where I, within my discretion, would permit further exploration through jurisdictional discovery.”); *see also Abira Med. Lab’ys*, 2023 WL 4074081, at *3 (“[J]urisdictional discovery is unwarranted because the Complaint does not include ‘factual allegations that suggest with reasonable particularity the possible existence of the requisite contacts.’” (quoting *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003))); *Abira Med. Lab’ys, LLC*, 2024 WL 1651678, at *3 (same).

⁸ *See North v. Ubiquity, Inc.*, 72 F.4th 221, 227 (7th Cir. 2023) (“[E]very circuit court to address this issue has agreed that § 1631’s reference to ‘jurisdiction’ encompasses personal jurisdiction as well as subject matter jurisdiction.”).

prejudice. *See, e.g., Rinaldi v. FCA US LLC*, Civ. No. 22-00886, 2022 WL 17340667, at *7 (D.N.J. Nov. 30, 2022) (“It is further due to this lack of briefing that the Court is unaware of any interests and intentions that have led the parties to choose not to seek transfer. Therefore, the Court will not *sua sponte* transfer this matter when doing so may be counter to those interests and intentions.”); *Klick v. Asbestos Corp., Ltd.*, Civ. No. 20-16654, 2021 WL 2666709, at *4 (D.N.J. June 28, 2021) (“[A]s the parties have not identified courts that may hear this case, nor have Plaintiffs argued they would be barred from refileing elsewhere, the Court declines to sever and transfer the claims against Boeing to another jurisdiction.”).

IV. CONCLUSION

For the reasons set forth above, and other good cause shown, Defendant’s Motion to Dismiss the Amended Complaint (ECF No. 13) is **GRANTED** in part and **DENIED** in part.⁹ An appropriate Order follows.

Dated: May 28, 2024


GEORGETTE CASTNER
UNITED STATES DISTRICT JUDGE

⁹ The Court does not reach the Rule 12(b)(6) arguments as to why Plaintiff’s claims fail as a matter of law.